

## **REMARKS**

In the Office Action mailed from the United States Patent and Trademark Office September 11, 2008, claims 1-11 were rejected under U.S.C. 103(a) as being unpatentable over Virine et al (US Patent No. 6,604,138) in view of Giacalone, JR (US Patent Publication No. 2001/0052000) and in further view of Official Notice. Accordingly, Applicant submits the following:

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-11 were rejected under 35 U.S.C. § 103(a) over Virine in view of Official Notice. Applicant respectfully submits Virine in view of Official Notice does not teach every aspect of the claimed invention M.P.E.P. §2142. Accordingly, Applicant respectfully traverses this rejection. In particular, Applicant traverses the assertion that it would have been obvious to a person of ordinary skill in the at the time of the invention to modify Virine to include a business operator customizing audio, visual, or information content to be broadcast at one or more particular business locations where client player devices are located to enable the business operator to control the way messages appear and to tailor them for the user's.

Further Applicant submits that Virine in view of Giacalone fails to teach each and every element recited in amended claims. Independent claim 1 recites a central server system, located at a service provider, comprising one or more central servers; a chain network system, in communication with at least one chain server by way of a computer network configuration facilitating the exchange of information between the chain network system and the central server system; a client server system, wherein the client server system is connected to the communications network, comprising a local advertising data layer located at a store geographically separated from the central server system, and geographically separated from the chain network system, for use in providing a broadcast, wherein said client server system is in communication through said computer network configuration with the chain network system; at least one client player devices placed at each business location, each of the client player devices being independently supported and in communication with an internal audio/visual system installed in the facility at a respective business location, wherein said client server system is in communication through a computer network configuration with the client server system

facilitating the exchange of information between the client player devices and the central server system; an independent media broadcast customizable by a business operator or advertiser supported on each of the client player devices and comprising at least one of an audio, a visual, and informational media content thereon that may be specific each of the particular business locations in which the at least one client player device is located; and an interface layer that allows the client server system to selectively interact with a data layer at the central server system to allow each local store to actively modify the data layer, located at the service provider, to create a unique audio program consisting of customized music and customized general advertising, and wherein the data layer is customized by the interface at each local store, such that control over the audio program is experienced locally at the client server system, disseminated remotely from the central server system, and introduced into a store by the at least one client player device. Each of independent claims 5 and 6 contains similar limitations, and such limitations are supported by the disclosure as originally filed.

In particular, Applicant asserts that the combination of art fails to read on the presently claimed system which allows each local store to actively modify the data layer, located at the service provider, to create a unique audio program consisting of customized music and customized general advertising, and wherein the data layer is customized by the interface at each local store, such that control over the audio program is experienced locally at the client server system, disseminated remotely from the central server system, and introduced into a store by the at least one client player device. Rather, the cited art teaches a system, wherein a user or an algorithm provides information to one of more users (Virine, col. 1, lines 25-26). This information may include “training videos, digital music, advertisements... cable TV” and “a user” may typically be a “user of exercise equipment.” Accordingly, the art is directed at a method for automatically generating information to provide to a user using computer code/algorithms and input provided by a user, and thus art does not describe a system that allows each local store to create a unique audio program consisting of customized music and customized general advertising by actually modifying the centrally stored data layer through an interface at each local store, such that control over the audio program is experienced locally at the client server system, disseminated remotely from the central server system, and introduced into a store by the at least one client player device.

Further, the particular passages of art cited in the pending Action fail to disclose a system such that control over the audio program is experienced locally at the client server system, disseminated remotely from the central server system, and introduced into a store by the at least one client player device. In particular, col. 1 lines 33-37, col. 2 lines 26-61, col. 4 lines 42-55, col. 6 lines 1-19, col. 7 lines 11-35, and Figures 1 and 4 of Virine which teach “generating content for delivery to a user based in part on the demographic profile of the user” (col. 2, lines 50-51), touch screens that “allow the user to communicate with the personal unit” (col. 4, lines 43-44), allowing a user to fast forward, rewind and stop channel (media) content (col. 6, lines 7-9), and allowing a user to “select specific programs from a list of available programs” (col. 7, lines 13-15), fail to read on the concept of local control over a centrally stored data layer, dissemination from the central server, and display at individual client player devices. Generating “content for delivery to a user based on the demographic profile of a user” (col. 2, lines 50-51) as understood based on the remainder of Virine is a method step accomplished by a computer algorithm. A computer algorithm is not equivalent to a claimed system; therefore, Virine col. 2, lines 50-51 does not teach every feature of claims 5 and 6. Further, allowing the user to “communicate with the personal unit,” fast forward, rewind, and stop channel content, and “select specific programs for a list” does not teach “allow[ing] each local store to actively modify the data layer, located at the service provider, to create a unique audio program consisting of customized music and customized general advertising.” Therefore, Virine does not disclose all of the features of claimed invention.

Additionally, Virine in view of Giacalone fails to disclose a system comprising a plurality of business chains each comprising a plurality of facilities at respective business locations. The art teaches a simple structure comprising a central server, a club server and a series of monitors in a retail environment. Virine does not disclose the more complex structure, which is recited in the claims of the present invention, of the central server system being connected to a chain network system which acts as a relay to a plurality of facilities at respective business locations, each of which maintains an independent server and a plurality of player devices for disseminating the communication of an audio visual message.

In the pending office action, column 4, line 7- column 5, line 31, has been cited as reading on the idea of a chain network system having at least one chain server servicing the business chain, said chain server in communication with each client player device in operation in

the business chain by way of a network configuration facilitating the exchange of information between the client player devices and the chain server, and on the concept of a central server. This is evidence that Virine simple system fails to read on the more complex and layered system presently claimed. Instead of teaching a system that includes a plurality of business chains, client player devices, a chain network system in communication with each client player device, a central server system and a customizable in store broadcast as claimed in the present invention, Virine teaches a local network preferably located at an establishment, (column 4, lines 6-8), a local server connected to a remote central server via a communications network (column 5, lines 14-15), wherein the local server is preferably connected to one or more monitors and possibly to personal units (column 4, lines 26-34). The express use of the word “plurality” in combination with the “s” on “chains” makes “chains” plural; disclosure of a single gym does not read on a plurality of business chains. Rather, Virine discloses a simple structure that comprises a central server that routes data to the local server that networks the data to a handful of users at a gym or club. Virine does not disclose a central server that provides media to a chain manager, which then modifies the data and supplies unique feeds to a variety of stores within the chain each of which possess a local network. Accordingly, Virine discloses a basic network system for providing media to a specific location and then disbursing that media to recipients within the location, but fails to disclose the intermediate step of utilizing a chain network server.

For at least this reason, Applicant respectfully submits that the prior art does not explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore does not render the claims obvious as provided herein.

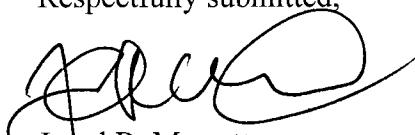
For at least this reason, Applicant respectfully submits that the prior art does not explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore does not render the claims obvious as provided herein.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this the 11 day of March, 2008

Respectfully submitted,



Jarod R. Marrott  
Attorney for Applicant  
Registration No. 59,294

KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 321-4814  
Facsimile: (801) 321-4893

JRM:brc  
1108138